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JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 460.

HIRAM REMINGTON,
Plaintiff in Error,

vs.

CENTRAL PACIFIC RAILROAD COMPANY,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF NEW YORK.

MEMORANDUM IN OPPOSITION TO MOTION TO ADVANCE CASE UNLESS ORAL ARGUMENT IS ALLOWED.

MAXWELL EVARTS,
Of Counsel for Defendant in Error.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

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Memorandum in Opposition to Motion to Advance Case unless Oral Argument is Allowed.

No opposition is in any way made to the advancement of the case. Objection however is raised that the case should not be advanced unless an opportunity is given the parties to orally present to the court the difficult questions involved.

The case is of just as much importance to the defendant in error as any other case, and there would seem to be no just reason why in this case it should be deprived of its right to orally present it to the court, because the other side has seen fit to advance it, whereas if no advancement had been applied for, the defendant in error would have had the opportunity to argue it orally. It does not seem as if the rights of a defendant in error should depend upon the whim of the opposite party. If the latter moves to advance then the defendant in error cannot argue his case. If no motion is made to advance then he can.

In view of the fact that the plaintiff in error has never taken any step in the case beyond the serving of his summons, the record is certainly voluminous, and one very difficult to understand. The bill of exceptions was presented to and signed by the Judge without any notice to the defendant in error of such presentation. If notice of such presentation had been given the bill of exceptions would have been very different and easier to understand.

There are at least three important questions of jurisdiction in this case, each depending upon its own set of facts to be extricated from a most complicated record and it is certainly most

difficult, if not quite impossible, to point out in a written brief, so clearly that there can be no mistake, the relation of these questions to the facts in the case; that is to say, the jurisdictional questions are difficult and complicated and depend upon facts in the record which are so intricate that it is by no means an easy, even if a possible task, to so present them in a written brief that the court will appreciate with certainty what are the important facts to which it should give consideration.

If there is ever any virtue or advantage in the oral presentation of a case to a court, it would seem to be in a case in which the record is confused and the questions of law are difficult and important. It would therefore appear requisite for the interests of the parties to this cause or at least of the defendant in error that there should be given an opportunity to orally present the questions involved to the court and I therefore respectfully ask that an opportunity be given to argue this case orally at an early date.

MAXWELL EVARTS,
Of Counsel for Defendant in Error.